

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**  
UNITED STATES OF AMERICA, : 10-cr-991 (JS) (AKT)  
:   
- versus - : U.S. Courthouse  
: Central Islip, New York  
BRIAN SULLIVAN, :  
Defendant : July 7, 2011  
-----X

TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING  
BEFORE THE HONORABLE A. KATHLEEN TOMLINSON  
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

For the Government: **Loretta E. Lynch, Esq.**  
United States Attorney

BY: **Carrie Capwell, Esq.**  
Assistant U.S. Attorney  
100 Federal Plaza  
Central Islip, NY 11722

For the Defendant: **John Carman, Esq.**

Transcription Service: **Transcriptions Plus II, Inc.**  
3859 Tiana Street  
Seaford, NY 11783  
lafertype@verizon.net

Proceedings recorded by electronic sound-recording,  
transcript produced by transcription service

Proceedings

1                 THE CLERK: Criminal Cause for Guilty Plea,  
2 United States of America v. Brian Sullivan, under docket  
3 10-cr-911.

4                 Counsel, appearances.

5                 MS. CAPWELL: Carrie Capwell for the  
6 government.

7                 Good afternoon, your Honor.

8                 THE COURT: Good afternoon.

9                 MR. CARMAN: It's John Carman for Mr. Sullivan.  
10                 Good afternoon, your Honor.

11                 THE COURT: Good afternoon.

12                 Now you are Brian Sullivan; is that correct?

13                 THE DEFENDANT: Correct.

14                 THE COURT: Mr. Sullivan, the case has been  
15 referred to me this afternoon for the specific purpose of  
16 hearing your plea and having you enter your plea. I have  
17 a referral order before me from Judge Seybert stating  
18 that I am to conduct the allocution under Rule 11 and to  
19 first determine whether the plea is knowingly and  
20 voluntarily made and not coerced and secondly to  
21 recommend whether the plea of guilty should be accepted  
22 and report that back to Judge Seybert.

23                 At the bottom of the referral form, there is a  
24 consent provision that appears to have been signed by you  
25 and your attorney, as well as Assistant United States

## Proceedings

1 Attorney Capwell, stating that you've had an opportunity  
2 to have full consultation with your counsel and that  
3 you're voluntarily consenting to have your plea entered  
4 here before me.

5 Is that correct?

6 THE DEFENDANT: That's correct.

7 THE COURT: And for the record, just so we're  
8 all on the same page here, Mr. Sullivan, do you  
9 understand that you have an absolute right to have your  
10 plea taken in front of Judge Seybert.

11 Do you understand that?

12 THE DEFENDANT: I understand.

13 THE COURT: And knowing that at this point, are  
14 you nonetheless agreeing to have your plea entered here  
15 before me?

16 THE DEFENDANT: Yes.

17 THE COURT: Did anybody coerce you in any way  
18 or threaten you in any way to get you to agree to have  
19 your plea heard here?

20 THE DEFENDANT: No.

21 THE COURT: And are you doing so freely and  
22 voluntarily?

23 THE DEFENDANT: Yes.

24 THE COURT: All right. Based on the  
25 information I have obtained from the defendant, I am

## Proceedings

1 signing the form as well.

2                 Mr. Sullivan, before accepting or recommending  
3 actually that your plea be accepted by Judge Seybert,  
4 there are a number of questions that I need to ask you in  
5 order to assure that this is a valid plea. If for some  
6 reason you do not understand any of my questions, I am  
7 going to ask you, if you would please, to either raise  
8 your hand or let Mr. Carman know that and I'll try to  
9 reword the question in a way that you can answer it.

10               All right?

11               THE DEFENDANT: Okay.

12               THE COURT: All right. Madam clerk, would you  
13 please swear in Mr. Sullivan.

14 **B R I A N   S U L L I V A N ,**

15 **called as a witness, having been first duly sworn,**  
16 **was examined and testified as follows:**

17               THE COURT: Mr. Sullivan, do you understand  
18 that having been sworn now your answers to my questions  
19 will be subject to the penalties of perjury or of making  
20 a false statement if you do not answer them truthfully?

21               THE DEFENDANT: Yes.

22               THE COURT: What is your full name, please?

23               THE DEFENDANT: Brian Sullivan.

24               THE COURT: And how old are you, sir?

25               THE DEFENDANT: 38.

Proceedings

1           THE COURT: Mr. Sullivan, what is the highest  
2 level of schooling or education that you've completed?

3           THE DEFENDANT: GED.

4           THE COURT: Are you now or have you recently  
5 been under the care of a physician or a psychiatrist?

6           THE DEFENDANT: No.

7           THE COURT: In the past 24 hours, have you  
8 taken any narcotic drugs, medicine or pills or drunk any  
9 alcoholic beverage?

10          THE DEFENDANT: No.

11          THE COURT: Have you ever been hospitalized or  
12 treated for narcotics addiction?

13          THE DEFENDANT: No.

14          THE COURT: Is your mind clear as you sit here  
15 this afternoon?

16          THE DEFENDANT: Yes.

17          THE COURT: And do you understand what is going  
18 on in the courtroom?

19          THE DEFENDANT: Yes.

20          THE COURT: Mr. Carman, have you had an  
21 opportunity to discuss this matter with Mr. Sullivan?

22          MR. CARMAN: Yes, your Honor.

23          THE COURT: And to the best of your knowledge,  
24 does he understand the rights that he would be waiving  
25 by pleading guilty?

## Proceedings

1           MR. CARMAN: He does.

2           THE COURT: And once again, to the best of your  
3 knowledge, is he capable of understanding the nature of  
4 these proceedings?

5           MR. CARMAN: I believe he is.

6           THE COURT: Now Mr. Carman, do you have any  
7 doubt as to Mr. Sullivan's competency to plead at this  
8 time?

9           MR. CARMAN: No, your Honor.

10          THE COURT: Mr. Sullivan, you have the right to  
11 plead not guilty.

12          Do you understand that?

13          THE DEFENDANT: Yes.

14          THE COURT: If you plead not guilty, under the  
15 Constitution and laws of the United States, you are  
16 entitled to a speedy and public trial by a jury with the  
17 assistance of counsel on the charges.

18          Do you understand that?

19          THE DEFENDANT: Yes.

20          THE COURT: At the trial, you would be presumed  
21 to be innocent and the government would have to overcome  
22 that presumption and prove you guilty by competent  
23 evidence and beyond a reasonable doubt. And you would  
24 not have to prove that you are innocent. And if the  
25 government failed, the jury would have the duty to find

## Proceedings

1 you not guilty.

2           Do you understand that?

3           THE DEFENDANT: Yes.

4           THE COURT: In the course of the trial, the  
5 witnesses for the government have to come to court and  
6 testify in your presence. And your counsel has the right  
7 to cross-examine the witnesses for the government, to  
8 object to evidence that's offered by the government and  
9 to offer evidence on your behalf.

10          Do you understand that?

11          THE DEFENDANT: Yes.

12          THE COURT: At the trial, while you would have  
13 the right to testify if you chose to do so, you would not  
14 be required to testify. Under the Constitution of the  
15 United States, you cannot be compelled to incriminate  
16 yourself. If you decided not to testify, the Court would  
17 instruct the jury that they could not hold that against  
18 you.

19          Do you understand that?

20          THE DEFENDANT: Yes.

21          THE COURT: If you plead guilty and if I  
22 recommend to Judge Seybert that the plea be accepted, you  
23 will be giving up your constitutional rights to a trial  
24 and the other rights that I have just discussed with you.  
25 There will be no further trial of any kind and no right

Proceedings

1 to appeal or collaterally attack or at any time question  
2 whether you are guilty or not. A judgment of guilty will  
3 be entered on the basis of your guilty plea and that  
4 judgment can never be challenged. However, you have the  
5 right to appeal with respect to the taking of this plea  
6 and the sentence.

7                  Do you understand that?

8                  THE DEFENDANT: Yes.

9                  THE COURT: If you plead guilty, I will have to  
10 ask you questions about what did you did in order to  
11 satisfy myself that you are guilty of the charges to  
12 which you seek to plead guilty. And you will have to  
13 answer my questions and acknowledge your guilt.  
14 Therefore, you will be giving up your right not to  
15 incriminate yourself.

16                  Do you understand?

17                  THE DEFENDANT: Yes.

18                  THE COURT: Mr. Sullivan, are you willing to  
19 give up your right to a trial and the other rights that I  
20 have discussed with you?

21                  THE DEFENDANT: Yes.

22                  THE COURT: I have also been handed up a plea  
23 agreement which is now marked that as Court Exhibit 1.

24                  And Mr. Sullivan, I want to ask you, aside from  
25 this agreement, do you have any agreement with the

Proceedings

1 government or anybody else concerning the plea and the  
2 sentence?

3 THE DEFENDANT: No.

4 THE COURT: My understanding is that  
5 Mr. Sullivan intends to plead guilty to a lesser included  
6 offense of Count 1 of the superseding indictment.

7 Is that correct?

8 MS. CAPWELL: Yes, it is.

9 THE COURT: Ms. Capwell, I will ask you now if  
10 you would please on behalf of the government to list  
11 whether there is any waiver of appeal or other waiver of  
12 rights included in this plea agreement.

13 MS. CAPWELL: Yes, your Honor. The defendant  
14 has agreed pursuant to the plea agreement to not appeal  
15 or challenge in any way his conviction or sentence as  
16 long as the sentence imposed by the Court is 33 months or  
17 less. He also agrees to bring no claims under the Hyde  
18 Amendment and he also agrees to no further discovery from  
19 the government.

20 He also agrees that any other claims, should  
21 the defendant breach his agreement, that any other  
22 prosecutions against him would be time-barred as of  
23 today's date so that the statute of limitations would not  
24 continue to run after today's date.

25 THE COURT: All right. Thank you.

## Proceedings

1           Mr. Sullivan, you've just heard the prosecutor  
2 outline the waivers that are contained in the plea  
3 agreement.

4           Do you hear them?

5           THE DEFENDANT: Yes.

6           THE COURT: And did you understand them?

7           MR. CARMAN: Your Honor, he asked one question  
8 of me with regard to the appeal waiver, if I could just  
9 clarify that with him.

10          THE COURT: Yes, go ahead.

11          (Counsel and client confer)

12          MR. CARMAN: I think we're okay here.

13          THE COURT: All right. Let's try that one more  
14 time then. You heard the prosecutor outline the waivers  
15 that are contained in the plea agreement; correct?

16          THE DEFENDANT: Correct.

17          THE COURT: And you've consented to those  
18 waivers; correct?

19          THE DEFENDANT: Correct.

20          THE COURT: And in particular, do you  
21 understand that if Judge Seybert sentences you to a term  
22 of 33 months or less incarceration, you will waive your  
23 right effectively to appeal that.

24          Do you understand?

25          THE DEFENDANT: Yes.

## Proceedings

1           THE COURT: Okay. So now we're looking at the  
2 lesser included offense of Count 1 of the superseding  
3 indictment and I will ask Ms. Capwell, if you would  
4 please, to fill in the elements of the crime that's  
5 charged here in Count 1.

6           MS. CAPWELL: Yes, your Honor. First, on or  
7 about and between March 1, 2010 and November 16, 2010;  
8 the second element, within the Eastern District of New  
9 York; third element, that the defendant acted knowingly  
10 and intentionally; fourth, that he agreed or conspired  
11 with others; fifth, to distribute and to possess with  
12 intent to distribute marijuana.

13           Because it is a lesser included offense, he  
14 does not need to allocute to any particular quantity.  
15 He's being permitted to plead guilty to a zero to five  
16 count which is under fifty kilograms of marijuana.

17           THE COURT: All right. And once again,  
18 Mr. Sullivan, you've heard the prosecutor now outline the  
19 elements of the crime with which you're charged and to  
20 which you have represented that you intend to plead  
21 guilty.

22           Did you understand those elements?

23           THE DEFENDANT: Yes.

24           THE COURT: And have you have you had an  
25 opportunity to speak to your attorney about them?

## Proceedings

1           THE DEFENDANT: Yes.

2           THE COURT: All right. Looking to the plea  
3 agreement and to the statute that applies here, the  
4 lesser included offense of Count 1 under the statute  
5 carries a maximum term of imprisonment of five years.

6           Do you understand that?

7           THE DEFENDANT: Yes.

8           THE COURT: And the minimum term of  
9 imprisonment that Judge Seybert can impose here is zero  
10 years.

11          Do you understand that?

12          THE DEFENDANT: Yes.

13          THE COURT: And once again, under the statute  
14 that applies to this particular count, there is a maximum  
15 fine of \$250,000.

16          Do you understand that?

17          THE DEFENDANT: Yes.

18          THE COURT: And do you also understand that  
19 there is a \$100 special assessment which is in the form  
20 of an administrative fee that you need to pay in the  
21 short term.

22          Do you understand that?

23          THE DEFENDANT: Yes.

24          THE COURT: And Mr. Sullivan, do you also  
25 understand that if Judge Seybert imposes a term of

## Proceedings

1 incarceration, she must also impose a period of  
2 supervised release. In this instance, the minimum period  
3 of supervised release is two years. The maximum  
4 supervised release term is life, to follow any term of  
5 imprisonment and if you violated a condition of release,  
6 you may be sentenced to up to two years without credit  
7 for pre-release imprisonment or time previously served on  
8 post-release supervision.

9 I know that's a mouthful, do you understand it?

10 THE DEFENDANT: Yes.

11 THE COURT: All right. Mr. Sullivan, have you  
12 had a opportunity to speak with Mr. Carman about the  
13 federal sentencing guidelines?

14 THE DEFENDANT: Yes.

15 THE COURT: Under a specific Supreme Court  
16 decision the federal sentencing guidelines have been  
17 determined to be advisory and not mandatory. In other  
18 words, Judge Seybert must consider the federal sentencing  
19 guideline range but she is not compelled to sentence you  
20 within that range.

21 Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: After considering the federal  
24 sentencing guidelines range, Judge Seybert must consider  
25 all of the other factors in your case. For example, she

## Proceedings

1 has to consider the statutory reasons for sentencing and  
2 those include first of all, the nature and circumstances  
3 of the offense here and the history and characteristics  
4 of you as the defendant.

5                 She has to also consider the need for the  
6 sentence imposed to reflect the seriousness of the  
7 offense, to promote respect for the law and to provide  
8 just punishment for the offense.

9                 She must also consider the need to afford  
10 deterrence as to other criminal conduct and the need to  
11 protect the public from further crimes that you might  
12 commit.

13                 Once Judge Seybert has considered the federal  
14 sentencing guidelines range and all of the other factors  
15 that I have just discussed with you, she must then  
16 ultimately determine a sentence that is reasonable,  
17 taking all of those things into account.

18                 Do you understand that?

19                 THE DEFENDANT: Yes.

20                 THE COURT: And, Mr. Sullivan, do you  
21 understand that any estimate of the guideline range that  
22 is provided by the government is not binding on the  
23 Court?

24                 THE DEFENDANT: Yes.

25                 THE COURT: And importantly, do you understand,

## Proceedings

1 Mr. Sullivan, that if the sentence imposed by  
2 Judge Seybert is more severe than what you expected, you  
3 will nonetheless be bound by your guilty plea and you  
4 will not be permitted to withdraw it?

5 THE DEFENDANT: Yes.

6 THE COURT: Mr. Sullivan, do you have any  
7 questions that you would like to ask me about the charge  
8 or your rights or anything else relating to this matter?

9 THE DEFENDANT: No.

10 THE COURT: Mr. Sullivan, are you ready to  
11 plead?

12 THE DEFENDANT: Yes.

13 THE COURT: Mr. Carman, do you know of any  
14 legal reason why Mr. Sullivan should not plead guilty?

15 MR. CARMAN: No, your Honor.

16 THE COURT: Mr. Sullivan, are you satisfied  
17 with your legal representation up until today?

18 THE DEFENDANT: Yes.

19 THE COURT: Now Mr. Sullivan, what is your plea  
20 to the lesser included offense of Count 1 in the  
21 superseding indictment?

22 THE DEFENDANT: Guilty.

23 THE COURT: Are you making the plea of guilty  
24 voluntarily and of your own free will?

25 THE DEFENDANT: Yes.

## Proceedings

1           THE COURT: Has anyone threatened you or forced  
2 you to get you to plead guilty?

3           THE DEFENDANT: No.

4           THE COURT: Other than the agreement with the  
5 government which is the plea agreement that we have  
6 marked as Court Exhibit 1, and has been stated on the  
7 record, other than that agreement, has anyone made any  
8 promises that caused you to plead guilty?

9           THE DEFENDANT: No.

10          THE COURT: Has anyone made any promise to you  
11 as to what your sentence will be?

12          THE DEFENDANT: No.

13          THE COURT: Mr. Sullivan, did you as charged in  
14 Count 1 of the superseding indictment on or about and  
15 between March 1, 2010 and November 16, 2010, here in the  
16 Eastern District of New York, along with others, did you  
17 knowingly and intentionally conspire to distribute and  
18 possess with intent to distribute a controlled substance;  
19 in this instance, marijuana.

20          THE DEFENDANT: Yes.

21          THE COURT: Mr. Sullivan, I am going to need you  
22 now please, if you would, to tell me in your own words  
23 what you did in connection with the acts that are charged  
24 in Count 1 of the superseding indictment.

25          THE DEFENDANT: I had an agreement with others

## Proceedings

1 to conspire to distribute marijuana, pretty much  
2 specifically in Suffolk County.

3 THE COURT: And was that time frame in 2010  
4 when this occurred?

5 THE DEFENDANT: Correct.

6 THE COURT: And you entered into this agreement  
7 freely with the others involved.

8 Is that correct?

9 THE DEFENDANT: Correct.

10 THE COURT: And at the time you entered into  
11 this agreement, conspiring to distribute and possess with  
12 intent to distribute marijuana, did you know you were  
13 breaking the law?

14 THE DEFENDANT: Yes.

15 THE COURT: All right.

16 Ms. Capwell, is there anything else you need?

17 MS. CAPWELL: No, your Honor, not in terms of  
18 the allocution. I was just going to put on the record  
19 the fact that there is a global plea in this case.

20 THE COURT: All right. You may proceed with  
21 that.

22 MS. CAPWELL: Thank you. So, I just want to  
23 make sure that the defendant is aware that paragraph 7 of  
24 the plea agreement covers the global plea offer and that  
25 the government has promised or agreed that as long as the

## Proceedings

1 defendants listed in Count 7 enter their guilty pleas by  
2 July 13, the government will move the Court for an  
3 additional point off under the guidelines.

4 However, if all defendants don't plead guilty  
5 by July 13, then the government has the option to not ask  
6 the Court for that extra point off.

7 THE COURT: You heard what the prosecutor just  
8 described, Mr. Sullivan. Yes?

9 THE DEFENDANT: Yes.

10 THE COURT: And you understand that unless  
11 everyone who is involved in this plea agreement actually  
12 pleads guilty, unless that happens, the government's not  
13 bound by that additional one credit off so-to-speak, with  
14 regard to your guidelines calculation.

15 THE DEFENDANT: Yes.

16 THE COURT: Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: All right.

19 Ms. Capwell, if you would, on behalf of the  
20 government, please outline for the record now if you  
21 would, the proof in this case if the case were to proceed  
22 to trial.

23 MS. CAPWELL: Yes, your Honor. The evidence in  
24 this case includes it was a wiretap investigation over  
25 many months, so it would include recordings of telephone

## Proceedings

1 calls, as well as text messages that were captured  
2 involving this defendant and his co-defendants in  
3 connection with the distribution of marijuana. It would  
4 also include surveillance of meetings that took place in  
5 connection with this conspiracy. Also, marijuana was  
6 seized during this investigation and it was tested by the  
7 DEA and confirmed that it was, in fact, marijuana.  
8 That's the large basis of the evidence.

9 THE COURT: All right. Thank you.

10 Based upon the information that's been given to  
11 me by the government, as well as by the defendant  
12 Mr. Sullivan and his counsel, I find that Mr. Sullivan is  
13 acting voluntarily, that he fully understands his rights  
14 and the consequences of his plea and that there is indeed  
15 a factual basis for the plea.

16 I, therefore, am recommending to Judge Seybert,  
17 that the plea of guilty here to the lesser included  
18 offense of Count One of the superseding indictment be  
19 accepted.

20 This case is set down for sentencing on October  
21 7 at 10:30 a.m. before Judge Seybert.

22 Is there anything further from the government?

23 MS. CAPWELL: No, thank you very much,  
24 your Honor.

25 THE COURT: Mr. Carman, anything further on

## Proceedings

1 behalf of Mr. Sullivan?

2 MR. CARMAN: No, your Honor. Thank you very  
3 much.

4 THE COURT: All right. We are concluded then.  
5 Thank you, all.

6 (Matter concluded)

7 -00-

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

## C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this  
22nd day of June, 2012.



Linda Ferrara

Linda Ferrara

CET\*\*D 656  
Transcriptions Plus II, Inc.